

SHARADA
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1112 OF 2011

- | | | |
|--------------------------------------|---|-------------|
| 1. The New India Assurance Co. Ltd., |) | |
| Thane Divisional Office, |) | |
| Shivkrupa Commercial Complex, |) | Appellants/ |
| Opposite 'B' Cabin Naka, Gokhale |) | (Original |
| Road, Naupada, Thane. |) | Opp.No.4/ |
| Insurer of Container No. HR-83-7330 |) | Insurer) |

Versus

- | | | |
|------------------------------------|---|-------------|
| 1. Smt. Malan Sukhadeo Patole, |) | |
| Aged 30 years, |) | |
| Occupation - Housewife, |) | |
| | | |
| 2. Sagar Sukhadeo Patole, |) | |
| Aged 9 years, |) | |
| Occupation- Student, |) | |
| | | |
| 3. Sarika Sukhadeo Patole, |) | |
| Aged 5 years, |) | |
| Occupation - Student, |) | |
| | | |
| 4. Pooja Sukhadeo Patole, |) | |
| Aged 2 years, |) | |
| Occupation - Nil, |) | |
| As the Applicant No. 2 to 4 are |) | |
| minors hence they are represented |) | |
| by Smt. Malan Sukhadeo Patole |) | |
| being their mother and natural |) | |
| Guardian. |) | |
| All are residing at Mhaisal, (M), |) | |
| Karoli, t. Taluka - Kavathemahakal |) | (Orig. |
| District - Sangli. |) | Applicants) |
| | | |
| 5. Mr. Rajaram Krushna Patole, |) | |
| Aged 65 years, |) | |

- Occupation – Nil,)
 (vide Exh. 68 order passed on)
 Exh. 1 dated 20.12.2010) ...Abated
6. Mrs. Sonabai Rajaram Patole,)
 Aged 65 years,)
 Occupation – Housewife,)
 Both residing at Mhaisal, (M),)
 Karoli, T. Taluka – Kavathemahakal)
 District – Sangli.)
7. Mr. Jogindar Singh Manikatal) Respondents
 Godwon No. 127, TTC Truck) (Original
 Terminal Kalamboli, Taluka) Applicants
 Panvel, Dist. Raigad,) and
 (Owner of Container No. HR-63-7330)) Original Opp.
 No.1, 2, 3)

Mr. D.R. Mahadik, for the Appellants.

Mr. Sachin Hande, for the Applicants in CAF/4847/2013.

CORAM : S. G. DIGE, J.

DATE : 21st DECEMBER, 2022

ORAL JUDGMENT

1. Being aggrieved and dissatisfied with the judgment and order passed by the Member, Motor Accident Claim Tribunal (For short 'the Tribunal'), Thane, the Appellant-Insurance Company (Original Opponent No.4) preferred this Appeal.

2. It is contention of the learned counsel for Appellant

that the issue involved in this Appeal is of identity of dead person. The accident took place on 14th July, 2006. In the inquest panchanama as well as in the Postmortem Report, the name of deceased is shown as Laxman Bhimrao Gavandi and not Sukhadev Rajaram Patole. There was no proof on record to show that deceased was Sukhadev Patole, but, this fact is not considered by the Tribunal and has awarded compensation and passed the impugned judgment, hence requested to allow the Appeal.

3. Learned counsel for the Respondent submits that initially the name of deceased was shown as Laxman Gavandi but he was Sukhadev Patole. The witnesses who examined before the Tribunal has categorically stated about it. The Investigating Officer Mr. Dhanraj Patil (PW No.5) who conducted the investigation of the said case deposed that name of deceased person was wrongly mentioned as Laxhman Gavandi. In investigation, it is found that he was Sukhadev Patole and accordingly he sent a letter to the Medical Officer (Exhibit-55) for correction in the name of Sukhadev Patole instead of Laxman Gavande in

the Post-mortem Report and cause of death certificate. The other witness, namely, Ankush Patole, who is brother of the deceased identified the dead body of Sukhadev Patole. He, therefore, submits that the order passed by the Tribunal is legal and valid.

4. I have heard both the learned counsel. Perused judgment and order passed by the Tribunal. The issue involved in this Appeal is whether deceased was Sukhdev Patole or Laxman Gavandi. The Tribunal on the basis of evidences of Investigating Officer Dhanaraj Patil (PW-5), Ankush Patole (PW-2) brother of deceased and Sunil Pimpale (PW-3) owner of Tempo, has held that deceased was Sukhadev Patole.

5. In my view, the evidence of Dhanraj Patil (PW-5) who was Investigating Officer of the crime is important. It appears from the record that initially when the dead body was found, driving license was found in his pocket showing the name of Laxman Gavandi. On that basis inquest panchanama was prepared. Postmortem Report and cause of death certificate were prepared accordingly. Thereafter,

in the investigation it is found that the dead person was not Laxman Gavandi but he was Sukhadev Patole. Dhanajay Patil (PW-5) at Exhibit-54 states that when he found dead body, one driving license was found in his pocket showing name of Laxman Gavandi. But, in investigation it was disclosed to him that deceased was Sukhdev Patole. He confirmed the said fact from the owner of Tempo, namely, Sunil Pimpale (PW-3), relative of the claimant. He recorded his statement and then sent a letter to Medical Officer for correction in the name of Sukhdev instead of Laxman Gavandi. The said letter is at Exhibit-55. The evidence of PW-2 Ankush Patole, who is brother of the deceased, has stated that he had identified the dead body, as his brother i.e Sukhdev Patole. Sunil Pimpale (PW-3) is the owner of Tempo deposed that deceased Sukhadev Patole was working as a driver on his Tempo. He identified the dead body of deceased as Sukhdev Patole from the evidence of these witnesses, it proves that deceased was Sukhdev Patole and not Laxman Gavandi. Mere on the basis of name on the driving license, wrongly his name was mentioned as

Laxman Gavandi. I do not find any infirmity in the observations of the Tribunal. The Appeal is devoid on merit.

6. Hence, I pass the following order.

ORDER

- (I) Appeal is dismissed. No order as to cost.
- (ii) Respondent Nos.1 to 4 and 6 (original claimants) are permitted to withdraw the amount deposited by appellant along with accrued interest thereon, if not withdrawn earlier;
- (iii) Appellant is entitled for refund of statutory amount along with accrued interest thereon, if any, as per rule.
- (iv) Pending Civil Application if any, disposed of.

(S. G. DIGE, J.)